Contributory Negligence (Beach, § 423) assures us that the statistics of litigation show that the harms sustained by six out of every seven persons suing in negligence, are due to their "own concurring and participating default."

F. M. B.

THE FRANKPLEDGE SYSTEM. By WILLIAM ALFRED MORRIS. New York. LONGMANS, GREEN & Co. (Harvard Historical Series, XIV). 1910. Pp. xiii-194.

This book, the first systematic study of the frankpledge system in its divers aspects, is as interesting and withal as scholarly and worthy a production as has graced the reviewer's table in a long while. It illustrates nearly to perfection the function of the intensive monograph in modern scholarship. The writer exhibits, moreover, a profound and remarkably thorough grasp not merely of his immediate subject, but of allied social, economic and—*mirabile dictu*—of legal questions as well.

The origin, the distribution, the organization and functions, and the decline of frankpledge are successively traced. The author finds in the Saxon institution of the "bohr," the genesis of the element of suretyship and reciprocal responsibility so prominent in frankpledge. In the quite distinct Saxon institution of the "tithing," he finds the germs of the police element in frankpledge and of the grouping by ten's. A particularly useful feature of the work to the student of jurisprudence is the comprehensive insight afforded the reader, into English local government between the days of William I and of Edward I, especially as regards the enforcement of the criminal law and the manner of pursuit and detention of wrongdoers. Even in these days of legal and juridical Philistinism and Materialism, such a very distinct contribution as this is, has its unquestioned value. In fact, English legal history, as a whole, deserves more than the merely perfunctory attention at present usually accorded to it in schools of law; the political scientist and the historian of to-day are doing the research which might equally and very reasonably be expected from students of the law, and this very work serves to emphasize, and to make the lawyer keenly conscious of, the fact.

Style and literary polish have not been unduly sacrificed by Prof. Morris. The book is a noteworthy example of the absolute possibility of treating a highly technical subject in a fluent and, one might almost say, refreshing manner. It is quite up to the high standard already set by the Harvard Historical Series and makes one sincerely wish that the late Prof. Gross, to whom the book is dedicated, might have been longer spared to us to the end that still more scholars might have been inspired by his teaching and example.

I. M. W.

THE LAW AND PRACTICE IN BANKRUPTCY UNDER THE NATIONAL BANKRUPTCY ACT OF 1898, by WM. MILLER COLLIER, Eighth edition, by FRANK B. GILBERT, Published by MATTHEW BENDER & Co., Albany, 1910.

The reason for this new edition of a standard treatise is stated in the preface to be "the important amendments to the Bankruptcy Act by the Act of June 25, 1910." As the preface says, these amendments "are far reaching in effect, and completely nullify many decisions which were controlling in the several jurisdictions." We do not deny that this cast a duty on the publishers of "Collier" to get out a new edition. But it was also incumbent upon this new edition to elucidate

the changes made by the 1910 amendments. The only fit inquiry here is whether this burden has been satisfactorily borne.

Perhaps the most important of the innovations relate to the bankruptcy of corporations. In the first place, section 4a of the Act was amended so as to allow a corporation to become a voluntary bankrupt. Heretofore the only way in which this result could be reached was for the company to declare itself unable to pay its debts and express its accompanying willingness to be adjudged a bankrupt. Upon the act of bankruptcy thus created, three complacent creditors would file a petition against the company; and thus by collusion and indirection a result would be achieved which the Statute should have allowed by simpler means. The book under review does not comment upon this important change in the law. On the other hand, there is a competent discussion of the amendment to section 4b, whereby all corporations are now made subject to involuntary bankruptcy, saving only municipal, railroad, insurance, and banking corporations. This amendment, which has relegated to fitting shades the subtle distinctions between a restaurant and a grocery, with respect to the corporate owner of the one or the other being engaged principally in trading or mercantile pursuits, and other like delights of schoolmen's law, is very wholesome. Perhaps the editor of "Collier" has best demonstrated its need by leaving in the text the lengthy discussion, which previous editions contained, of the decisions which accrued prior to the amendment.

We cannot say this with regard to the comments on two other amendments. Section 12 of the Act has been amended so as to allow the insolvent to offer a composition before he is adjudged a bankrupt. The text, however, is not properly changed from that of previous editions. For instance, after a discussion of the Act of 1874, amending the Act of 1867, so as to allow a composition before adjudication, we find this astonishing statement: "The more important changes made by the present law will be discussed later. A few of them are: (1) *there can now be no composition until after adjudication and a meeting of creditors*" (p. 231). It is not until we reach page 234, after a long discussion of the practice as it was before the amendment of 1910, that we find the latter mentioned. Surely this sort of text revision is not helpful.

And yet again, in the discussion of section 59g we find the same error in revision. That section, as now amended, forbids the dismissal of the original petition, though it is agreed to between the petitioning creditors and the alleged bankrupt, until after due notice has been given to all creditors. To that end the alleged bankrupt in such case is required to file a schedule of all his creditors so that they can be judicially notified of the proposed discontinuance. Now anyone reading the decision of the Circuit Court of Appeals, Second Circuit, in *In re Levi* (142 Fed. 642) would at least be sure that the amendment above mentioned is exactly contrary to that case. We do not know whether the amendment was deliberately drawn to destroy the authority of a decision to which the Bar never took kindly, and whose rule was never recognized in the practice followed in the Southern District of New York. But it is at least clear that *In re Levi* is no longer a ruling case. Therefore it is misleading for the book before us to state, in its comments on this amendment, that *In re Levi* is still authority for the doctrine that "a dismissal may be had on motion of bankrupt without notice to creditors who have not intervened where

there is no suggestion of collusion" (pp. 642-3). The present law is just the opposite. That sentence was proper in the seventh edition, but it should not have appeared in the volume before us.

The 1910 amendments have placed receivers on the same level with trustees in regard to the *quantum* of their compensation. We find this change noted though not under section 48d, where the amendment struck in, but we find no discussion of that part of the amendment which allows the trustee or the receiver to retain his commission from money turned over to lienors. Yet this amendment settled a point of some doubt (see *In re Anders Push Button Co.*, 136 Fed. 995) and deserved some discussion.

Nor do we find much comment upon the amendment to section 47a which declares that the trustee, as to all property in the custody or coming into the custody of the Court, is "vested with all the rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings thereon," and, as to all property not in the custody of the court, is "vested with all the rights, remedies, and powers of a judgment creditor holding an execution duly returned unsatisfied." For the learning under this head, the text refers us to the House Committee Report. But why should not the eight edition of Collier furnish at least the outline of a discussion which has for years occupied the courts; has twice penetrated into the pages of this magazine (5 COLUMBIA LAW REVIEW 584; 6 *id.* 562), and has terminated in this amendment?

Another of the 1910 amendments relates to the burdened learning of preferences, and changes the language of the important section 60b. Still another change, in what may prove to be an important respect, is the wording of section 67a relating to the validity of liens upon the bankrupt's property. It would seem that to even mention these changes in the law would provoke a discussion of their scope, their *raison d'etre,* and their possible effect. But the editor of the eighth edition of "Collier" does not gratify us. These changes are indicated by italics in the Statute, and are merely noted in the gloss. But we venture to predict that these changes in the law will receive more attention from the courts than the perfunctory notice this editor has accorded them.

So far, therefore, as the 1910 amendments to the Bankruptcy Act are concerned we see no reason for this new edition. One could get along better with the Seventh edition and a pamphlet copy of the Statute as amended. Of course another reason for this edition may have been the decisions that have been made since the last edition appeared in May, 1909. But as yet we have no precedents for an annual edition of even so useful a treatise as "Collier." At any rate, that purpose could be better served by an annual digest of bankruptcy decisions.

G. G.

BOOKS RECEIVED:

CASES OF THE LAW OF EQUITY JURISPRUDENCE AND TRUSTS. By N. K. ABBOTT. Chicago: T. H. FLOOD & Co. 1909. pp. xi, 1047.

LABOR LEGISLATION IN IOWA. By E. H. DOWNEY. Iowa City: STATE HISTORICAL SOCIETY OF IOWA. 1910. pp. x, 283.

A TREATISE ON SECRET LIENS AND REPUTED OWNERSHIP. By ABRAM I. ELKUS AND GARRARD GLENN. New York: BAKER, VOORHIS & Co. 1910. pp. xxx, 195.